

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby gives Notice of Intended Action to amend Chapter 12, “Claims for Indigent Defense Services,” and Chapter 13, “Claims for Other Professional Services,” Iowa Administrative Code.

These amendments update the requirements for claims made by certified shorthand reporters from the indigent defense fund, clarifying the documentation and information required for such claims and setting maximum rates to be paid for certified shorthand reporting services. The amendments also provide that the State Public Defender may contract with a certified shorthand reporter and designate the reporter to provide all shorthand reporting services for court-appointed cases in a county. In addition, the amendments clarify that a claim by an attorney for reimbursement of expenses directly paid by the attorney to a certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert shall only be paid to the extent the claim would have been paid if submitted by the original claimant to the State Public Defender.

Any interested person may make written suggestions or comments on these proposed amendments on or before April 10, 2012. Such written comments should be sent to Mark C. Smith, State Public Defender’s Office, Fourth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-7289; or e-mail msmith@spd.state.ia.us.

A public hearing will be held on April 10, 2012, at 1 p.m. in Conference Room 424, Fourth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the State Public Defender and advise of specific needs.

After analysis and review of this rule making, no adverse impact on jobs has been found. The amendments were developed in collaboration with stakeholder groups to minimize any adverse impact on stakeholders.

These amendments are intended to implement Iowa Code chapters 13B and 815.

The following amendments are proposed.

ITEM 1. Amend subrule 12.7(1) as follows:

12.7(1) The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

b. A copy of each of the application and order granting authority accompanies following documents is attached to the claim-:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1)“b”(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4)“b” when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

c. The expenses would be payable if the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or an expert submitted such claim directly pursuant to 493—Chapter 13, except for the requirement that the claim be submitted on the miscellaneous claim form promulgated by the state public defender.

d. The certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation or expert does not submit a claim for the same services.

d. ~~The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be used to pay for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert.~~

e. ~~A copy of the court order authorizing the expense is attached to the claim.~~

f. ~~In claims for services of investigators, foreign language interpreters, or experts, a copy of a court order setting the maximum dollar amount of the claim is attached to the claim.~~

g. e. ~~In claims for the cost of an evaluation requested by an appointed attorney, the attorney will~~ shall be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form. Claims for the cost of an evaluation to be used for any other purpose, such as sentencing or placement, will not be reimbursed.

ITEM 2. Amend subrule 12.7(3) as follows:

12.7(3) In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs subrule 12.7(1)“b” to “d” shall apply.

ITEM 3. Amend rule 493—12.10(13B,815) as follows:

493—12.10(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the attorney, by the state public defender, by the department, or otherwise, the claimant shall notify the clerk of court of the error and shall reimburse the department indigent defense fund for the amount of the overpayment. An overpayment that is returned to the department shall be paid by check. The check, made payable to the “Treasurer, State of Iowa,” and together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the Department of Inspections and Appeals, Indigent Defense Unit Office of the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. The attorney is responsible for notifying shall notify the clerk of court of any payment error the overpayment or double payment.

ITEM 4. Amend subrule 13.2(4) as follows:

13.2(4) Claims for certified shorthand reporters. The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters if the following conditions are met: only in accordance with the requirements of this subrule.

a. Claim form. The certified shorthand reporter submits shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.

- ~~(3) The date on which the deposition/court proceeding commenced.~~
(4) (3) The date on which the transcript was ordered.
~~(5) (4) The date on which the transcript was delivered.~~
~~(6) The number of pages and cost per page.~~
(7) (5) The total amount of the claim.
(8) (6) The claimant's name, address, social security number, or federal tax identification number or vendor ID, e-mail address, if any, and telephone number.

~~b. Court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.~~

~~c. b. Required documentation.~~ One copy of each of the following documents is must be attached to the claim:

(1) The application and order granting authority to hire the certified shorthand reporter at state expense. The court order must show that court approval to hire the certified shorthand reporter was obtained before any expenses for the certified shorthand reporter were incurred.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services.

(3) Itemization of any additional services or charges based on some criterion other than cost per page including date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges.

(4) If the certified shorthand reporter charges a "sitting fee" for services based on a specific time, a certification by the certified shorthand reporter that no other services have been performed or charges made by the certified shorthand reporter for any portion of that specific time. If expedited transcript rates are claimed under subparagraph 13.2(4) "d"(10), an e-mail or other written statement from the attorney explaining that expedited delivery is required.

(5) If a cancellation fee is claimed under subparagraph 13.2(4) "d"(6), documentation of the date and time that notice of cancellation is given.

~~(5) (6)~~ If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

~~c. Rates for court transcripts. Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment~~ If the certified shorthand reporter is a judicial branch employee, claims for certified shorthand reporter services for preparation of court transcripts will be limited to the rate approved by the Iowa supreme court for preparation of transcripts and other certified shorthand reporter services.

~~d. Rates for other transcripts. Unless the certified shorthand reporter has a contract with the state providing for a different rate or manner of payment or the certified shorthand reporter submits a claim for a lesser amount, claims for certified shorthand reporter services for a non-judicial branch employee will be paid only at the rates set forth in this paragraph:~~

(1) Hourly rate when no transcript ordered. Fees for attending depositions when no transcript is ordered will be paid at the rate of \$45 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment.

(2) Hourly rate when transcript ordered. Fees for attending depositions when a transcript is ordered will be paid at the rate of \$35 per hour for the actual time the certified shorthand reporter is present at the depositions including setup and takedown of equipment.

(3) Travel time. Fees for travel time will be paid at the rate of \$15 per hour for travel outside of the county of the certified shorthand reporter's office location. Travel time within the county of the certified shorthand reporter's office location will not be paid. No travel time is payable for the delivery of a transcript.

(4) Transcripts. Unless expedited delivery is requested, fees will be paid at the rate of \$3.50 per page for an original, one copy, and an electronic version of the transcript. Copies of a transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

(5) Exhibits. A rate of \$0.10 per page for black and white and \$0.30 per page for color copies will be paid.

(6) Cancellation fees. No cancellation fees will be paid as long as the certified shorthand reporter is given notice of cancellation at least 24 hours before the time scheduled for a deposition. If the deposition is canceled with less than 24 hours' notice, a fee for two hours or the actual time that the certified shorthand reporter is present at the site of the deposition including setup and takedown of equipment, whichever is greater, is payable at the rate set forth in subparagraph 13.2(4) "d"(1). A certified shorthand reporter is deemed to have been given notice of cancellation when an attorney or representative of the attorney delivers notice of a cancellation to the e-mail address provided by the certified shorthand reporter or leaves a message on voicemail or with a representative of the certified shorthand reporter at the telephone number provided by the certified shorthand reporter, not when the certified shorthand reporter actually hears or reads the message.

(7) Minimum time. One hour minimum, exclusive of travel time, will be paid for a deposition that takes less than one hour.

(8) Other time. Except for the initial one hour minimum, all time billed at an hourly rate shall be billed in 15-minute increments.

(9) Postage. Actual postage costs that are reasonable and necessary will be paid.

(10) Expedited transcripts. Expedited transcripts are those that are required to be delivered within five business days of the date requested. Fees of \$6 per page for an original, one copy, and an electronic version of the transcript will be paid for expedited transcripts. Copies of an expedited transcript for which an original has already been ordered by any party will be paid at the rate of \$1 per page.

~~*d. e. Timely claims required. Claims for services completed before July 1, 2008, are timely if submitted to the state public defender for payment before August 15, 2008. Claims for services completed after June 30, 2008, are timely if submitted to the state public defender for payment within 45 days of the date on which services are completed.*~~

~~*e.*~~ For depositions, services are completed on the date the deposition transcript is delivered or on the date of disposition of the case if no transcript is ordered, whichever date is earlier. For trial transcripts, services are completed on the date the trial transcript is delivered.

~~*f.*~~ Claims ~~which~~ that are not timely ~~will~~ shall be denied.

f. Designation of preferred certified shorthand reporter. The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the Web site of the state public defender, <http://spd.iowa.gov>. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

ITEM 5. Amend rule 493—13.5(13B,815) as follows:

493—13.5(13B,815) Payment errors. If an error resulting in an overpayment or double payment of a claim is discovered by the claimant, by the state public defender, by the department, or otherwise, the claimant shall reimburse the indigent defense fund for the amount of the overpayment. An overpayment or double payment shall be repaid by check. The check, made payable to "Treasurer, State of Iowa," together with a copy of the payment voucher containing the overpayment or double payment, shall be mailed to the ~~Department of Inspections and Appeals, Indigent Defense Unit~~ Office of the State

Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. The claimant shall notify the clerk of court of the overpayment or double payment.